

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

WD PARTNERS, INC.,

Plaintiff,

v.

**Case No. 2:13-cv-00541
Judge Gregory L. Frost
Magistrate Judge Deavers**

**THE CHARTER OAK FIRE INSURANCE
COMPANY,**

Defendant.

CONSENT JUDGMENT

This matter is before the Court on the parties' joint motion for a consent judgment in this case. (ECF No. 14.) The parties ask the Court to enter an order in keeping with the proposed consent judgment submitted to the Court. (ECF No. 14-1.) The Court **GRANTS** the parties' motion and enters a consent judgment as follows.

Plaintiff WD Partners, Inc. and its engineer Sam Khalilieh were sued in a wrongful death action initiated in Bay County Florida Circuit Court. The sole count against WD Partners, Inc. in the wrongful death action alleged that WD Partners, Inc. was negligent because it failed "to properly plan and/or design the electrical components of the job", and specifically, failed "to locate and identify all power sources and wiring" in a Big Lot store being remodeled, and as a proximate result the plaintiff's decedent in the wrongful death action was electrocuted. The only count against Sam Khalilieh captioned "Professional Negligence", and alleged "specifically [he] failed to perform any inspection of the site."

Defendant Charter Oak Fire Insurance Company issued WD Partners, Inc. an insurance policy that provided general liability coverage subject to a "professional services" exclusion.

The exclusion states that the insurance does not apply to alleged liability for bodily injury “arising out of the rendering of or failure to render any ‘professional service’” and “professional services” is defined to mean “any service requiring specialized skill or training including the following: a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and b. Supervisory, inspection, architectural or engineering activities.”

A general liability insurance company does not owe defense or indemnity where the allegations are as specific as they are in the wrongful death action, and the insurance policy contains a “professional service” exclusion like the one in Defendant’s policy. *See Havens & Emerson, Inc. v. Aetna Cas. & Sur. Co.*, 8th Dist. No. 65507, 1994 Ohio App. LEXIS 2058 (Ohio Ct. App. May 12, 1994); *Womack v. Travelers Ins. Co.*, 251 So.2d 463 (La. App. 1971); *Wimberly Allison Tong & Goo, Inc. v. Travelers Prop. Cas. Co. of America*, 352 F. App’x 642 (3d Cir. 2009); *Imperial Cas. & Indem. Co. v. Aetna Ins. Co.*, No. 85-4681, 1988 U.S. Dist. LEXIS 11199 (E.D. La. Oct. 6, 1988); *USF&G Co. v. Continental Cas. Co.*, 153 Ill. App.3d 185, 505 N.E.2d 1072 (Ill. App. 1987); *Houston Cas. Co. v. St. Paul Fire & Marine Ins. Co.*, No. 3:09-926-CMC, 2010 U.S. Dist. LEXIS 34314 (D.S.C. April 7, 2010); and *Auto-Owners Ins. Co. v. State Farm Fire and Cas. Co.*, 297 Ga. App. 751, 678 S.E.2d 196 (Ga. App. 2009).

Therefore, based on the specific allegations alleged against WD Partners, Inc. and its engineer Sam Khalilieh in this wrongful death action, the Court enters final judgment in Defendant’s favor on the complaint and counterclaim in this action. The Court declares that Defendant Charter Oak Fire Insurance Company does not owe Plaintiff WD Partners, Inc. or its engineer Sam Khalilieh defense or indemnity in the wrongful death action, and dismisses with

prejudice Plaintiff WD Partners, Inc.'s breach of contract and extra-contractual claims against Defendant Charter Oak Fire Insurance Company at Plaintiff's cost.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
UNITED STATES DISTRICT JUDGE